

## ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR08-1192

DEMETRIUS TORRENCE,  
APPELLANT

V.

STATE OF ARKANSAS,  
APPELLEE

Opinion Delivered 13 MAY 2009

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
[NO. CR02-1580 & CR05-323]THE HONORABLE BARRY SIMS,  
JUDGE

AFFIRMED

**D.P. MARSHALL JR., Judge**

The circuit court placed Demetrius Torrence on probation in two separate cases. In the first case, the circuit court found Torrence guilty of three counts of committing a terroristic act and sentenced him to five years' probation. In the other case, Torrence pleaded guilty to one count of possession of drug paraphernalia and one count of possession of marijuana with intent to deliver. The circuit court sentenced him to three years' probation. The State petitioned to revoke Torrence's probated sentences, alleging that he had failed to report, failed to pay his supervision fees, and tested positive for marijuana—all violations of his probation conditions. After a hearing, the circuit court revoked Torrence's probation in both cases. Torrence appeals, arguing that the evidence supporting revocation was insufficient because the State did not prove that his violations were inexcusable.

To revoke, the circuit court had to find by a preponderance of the evidence that Torrence had inexcusably failed to comply with one or more conditions of his probation. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Harris v. State*, 98 Ark. App. 264, 267, 254 S.W.3d 789, 791–92 (2007). “Once the State introduces evidence of non-compliance in a revocation hearing, the defendant then bears the burden of going forward with some reasonable excuse for non-compliance.” *Anglin v. State*, 98 Ark. App. 34, 36, 249 S.W.3d 836, 838 (2007). We defer to the circuit court’s evaluation of the witnesses’ credibility and conflicting evidence. *Wilcox v. State*, 99 Ark. App. 220, 222, 258 S.W.3d 785, 787 (2007).

On appeal, Torrence admits that the State proved that he violated at least one of the conditions of his probation in each of the two cases. He argues, however, that the State failed to present evidence that his violations were without reasonable excuse. For example, Torrence argues that “the State failed to prove that he did not have a valid medical reason for using marijuana.” But this was not the State’s burden. *Anglin*, 98 Ark. App. at 36, 249 S.W.3d at 838. Once the State proved that Torrence tested positive for marijuana, failed to report, and failed to pay his supervision fees, it was up to Torrence to provide some reasonable excuse for his failure to comply with those conditions. *Ibid.* At the hearing, Torrence testified that several people close to him had died, that he was homeless for a period, and that he “totally lost [his] mind.” When asked by the prosecutor whether he thought that these bad things excused him

from complying with his probation conditions, Torrence blamed his failure to comply on “mental stress.”

The circuit court had to judge Torrence’s credibility and decide whether his explanations were reasonable in the circumstances, thereby excusing his noncompliance. *Wilcox*, 99 Ark. App. at 222, 258 S.W.3d at 787. The court’s determination that Torrence’s explanations were not reasonable and that his probation should therefore be revoked was not clearly against the preponderance of the evidence. *Anglin*, 98 Ark. App. at 36, 249 S.W.3d at 838.

Affirmed.

VAUGHT, C.J., and BAKER, J., agree.